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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,657	11/10/2003	Jeremy Thaler	10770013010202	6140

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EXAMINER	
PRATT, HELEN F	
ART UNIT	**PAPER NUMBER**
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/705,657	THALER ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 12 are indefinite in the use of the phrase "resistant to subsequent separation of oil ". It is not known whether oil can separate or not in the composition, or any measurement as to the degree of oil separation that would be acceptable.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1- 8, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rombauer et al. (Joy of Cooking).

Rombauer et al. disclose a peanut butter made from dry roasted blanched peanuts, safflower or vegetable oil, and salt as in claims 1, 5, 6 and 7. Rombauer discloses that Federal regulations require commercial peanut butter to contain 90% roasted ground peanuts and addition of no more than 10% salt, sweeteners and oil (page 564, col. 1, last para, col. 2, 1st para.). Rombauer discloses that Federal regulations allow sweeteners in a peanut butter composition as in claim 7, the particular sweetener is seen as being within the skill of the ordinary worker as in claim 8. Therefore, it would have been obvious to choose a particular sweetener absent anything unexpected from the use of a particular sweetener.

Rombauer et al. disclose as in claim 1, the use of 1 and one half tablespoons of oil to 1 cup of peanuts, which is 9% oil. However, it is seen that it would have been within the skill of the ordinary worker to use particular amounts of oil as the government regulations say that salt sugar and oil can be used in amounts up to 10% and certainly peanuts vary as to how much oil they contain. Therefore, it would have been obvious to use particular amounts of ingredients as claimed.

Claim 2 further requires only palm oil. However, applicants' specification discloses that non-hydrogenated oil can be used and that the use of. Applicants are using their preferred embodiment as in claim 2 (page 4). It would have been within the skill of the ordinary worker to use a particular oil since its characteristics are well known, and the specification discloses the use of non-hydrogenated oil. No unexpected results

have been shown using palm oil in particularly. Therefore, it would have been obvious to choose an oil from other hydrogenated oils absent anything unexpected.

The particular melting point as the claimed palm oil is seen as an inherent characteristic as in claim 3 with a known melting point as in claim 4 has been shown.

Nothing new is seen in the use of the well known Valencia peanut as in claim 10. Therefore, it would have been obvious to use known types of peanuts.

Claims 12-18, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rombauer et al., page 564 in view of Wong (6,312,754). .

Rombauer et al. discloses a nut butter spread made by grinding nuts in the presence of oil at electric blender temperatures. Cooling is a given since peanut butter is not kept in a heated state. The composition has been shown as above and is obvious for those reasons. Claims 12, 15, and 21 differ from the reference in the steps of grinding peanuts in a mill and then combining oil and in the use of organically grown peanuts and organic palm oil and in the particular amounts of peanuts. Wong discloses roasting peanuts, blanching them then grinding to a paste in a Bauer mill, then adding oil, sugar and sat and homogenizing (col. 6, lines 1-20). Nothing new is seen in using organically grown peanuts as opposed to commercially grown peanuts absent a showing of unexpected results in using peanuts, which are grown without the use of chemical fertilizers. Wong discloses the use of palm oil in amounts of 3-6% (col. 7, lines 65,-68, col. 8, lines 1-9). Therefore, it would have been obvious to use known amounts of peanuts as disclosed by Rombauer et al. and to use known types of peanuts and organically grown peanuts and to use palm oil since nothing critical is seen

in using palm oil and to roast and grind and add ingredients as shown by Wong in the process of Rombauer et al.

No patentable distinction is seen in dispensing oil into a throat of the mill as in claim 13 absent anything new or unobvious as long as the oil reaches the peanuts. Nothing new is seen in adding the oil during the grinding step into the mill, as in claim 13 absent anything new or unobvious. Therefore, it would have been obvious to dispense oil into the apparatus while grinding the peanuts and to add oil at an acceptable point in the process.

Claims 14 and 15 further require preheating the oil before dispensing the oil into the mill at particular temperatures and claim 16 requires roasting the peanuts before grinding. The reference is silent as to heating the oil. However, nothing new is seen in heating the oil before adding it since the peanut paste and oil were maintained at a temperature above 133 F. absent a showing of unexpected results using the claimed temperatures. Certainly the nuts are roasted before grinding (col. 2, lines 41-50). Therefore, it would have been obvious to dispense oil into a mill at particular temperatures and to grind the nuts prior to roasting.

Roasting nuts at particular temperatures is disclosed by Rombauer et al. at 300 F. as in claim 17. Therefore, it would have been obvious to roast at known temperatures.

Nothing new is seen in removing the skins which is common in the art as in claim 18. Blanching nuts is disclosed as above by Wong. Therefore, it would have been obvious to remove skins from peanuts before processing.

Wong discloses as in claim 20 of collecting and pumping the peanut mixture to a heat exchanger and filling station, which is routinely done in the art (col. 20, lines 1-16). Therefore, it would have been obvious to collect, and pump the mixture in order to put it into containers.

Rombauer et al. discloses that it is known to use salt and sweetener in peanut butter as in claims 22 and claim 23 (page 564). The claims require adding such before the combining step. Rombauer et al. does not address when to combine the ingredients. However, as a matter of practicality, no difference is seen in adding salt and a sweetener at any stage of the process absent anything new or unobvious in adding the ingredients after grinding. Therefore, it would have been obvious to add the ingredients at any practical time.

Claims 9, 11,19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above reference as applied to the above claims, and further in view of Krisinski et al. (4,143,176).

Krisinski et al. disclose that it is known to use particle sizes of from 8-20 microns as in claims 11 and 24 (col. 1, lines 58-70). Also, Krisinski et al. discloses that it was known to make a conventional peanut butter using normal skins and germ in the amounts of 50-60% as in claims 9 and 19 (col. 2, lines 22-41). Therefore, it would have

been obvious to grind to a particle size as claimed as shown by Krisinski et al. in the process of the combined references and to add the germ to the composition.

ARGUMENTS

Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 2-22-07

Helen Pratt

HELEN PRATT
PRIMARY EXAMINER